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7

8 **ARIZONA MEDICAL BOARD**

9 In the Matter of

10 **ROBERT A. ROSENBERG, M.D.**

11 Holder of License No. 22637  
12 For the Practice of Allopathic Medicine  
13 In the State of Arizona.

Board Case No. MD-03-0266

**CONSENT AGREEMENT FOR  
DECREE OF CENSURE AND  
PROBATION**

14 In the interest of a prompt and judicious settlement of this case, consistent with the  
15 public interest, statutory requirements and responsibilities of the Arizona Medical Board  
16 ("Board"), and pursuant to A.R.S. §§ 32-1401 *et seq.* and 41-1092.07(F)(5), the  
17 undersigned party, Robert A. Rosenberg, M.D. ("Respondent"), holder of License No.  
18 22637 for the practice of allopathic medicine in the State of Arizona, and the Board enter  
19 into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent  
20 Agreement") as the final disposition of this matter.

21 **RECITALS**

22 1. Respondent has read and understands this Consent Agreement as set forth  
23 herein, and has had the opportunity to discuss this Consent Agreement with an attorney  
24 or has waived the opportunity to discuss this Consent Agreement with an attorney. Re-  
25  
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1 spondent voluntarily enters into this Consent Agreement for the purpose of avoiding the  
2 expense and uncertainty of an administrative hearing.

3       2. Respondent understands that he has a right to a public administrative hear-  
4 ing concerning each and every allegation set forth in the above-captioned matter, at  
5 which administrative hearing he could present evidence and cross-examine witnesses. By  
6 entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all  
7 rights to such an administrative hearing, as well as all rights of rehearing, review, recon-  
8 sideration, appeal, judicial review or any other administrative and/or judicial action, con-  
9 cerning the matters set forth herein. Respondent affirmatively agrees that this Consent  
10 Agreement shall be irrevocable.

11       3. Respondent agrees that the Board may adopt this Consent Agreement, or  
12 any part thereof, pursuant to A.R.S. §§ 32-1401 et seq. and 41-1092.07(F)(5). Respon-  
13 dent understands that this Consent Agreement, or any part thereof, may be considered in  
14 any future disciplinary action against him.

15       4. Respondent understands that this Consent Agreement does not constitute a  
16 dismissal or resolution of other matters currently pending before the Board, if any, and  
17 does not constitute any waiver, express or implied, of the Board's statutory authority or  
18 jurisdiction regarding any other pending or future investigation, action or proceeding.  
19 Respondent also understands that acceptance of this Consent Agreement does not pre-  
20 clude any other agency, subdivision or officer of this state from instituting other civil or  
21 criminal proceedings with respect to the conduct that is the subject of this Consent  
22 Agreement.

23       5. Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning it to the Board's Executive Director, Respondent may not re-  
25 voke his acceptance of this Consent Agreement or make any modifications to it, regard-  
26

1 less of whether this Consent Agreement has been issued by the Executive Director. Any  
2 modification to this original document is ineffective and void unless mutually approved  
3 by the parties in writing.

4 6. Respondent understands that the foregoing Consent Agreement shall not  
5 become effective unless and until adopted by the Board and signed by its Executive  
6 Director.

7 7. Respondent understands and agrees that if the Board does not adopt this  
8 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
9 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

10 8. Respondent understands that this Consent Agreement is a public record that  
11 may be publicly disseminated as a formal action of the Board, and shall be reported as  
12 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
13 Protection Data Bank.

14 9. Respondent understands that any violation of this Consent Agreement con-  
15 stitutes unprofessional conduct pursuant to A.R.S. § 32-1401(24)(r)(violating a formal  
16 order, probation, consent agreement or stipulation issued or entered into by the board or  
17 its executive director under the provisions of this chapter) and may result in disciplinary  
18 action pursuant to A.R.S. § 32-1451.

19  
20 DATED: 23 January 2006

  
Robert A. Rosenberg, M.D.

21 Reviewed and Approved as to Form:

22  
23 By: \_\_\_\_\_  
24  
25  
26

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for licensing and regulating the  
3 practice of allopathic medicine in the State of Arizona.

4 2. Respondent, is the holder of License No. 22637 for the practice of allopath-  
5 ic medicine in the State of Arizona.

6 3. On February 5, 2003, the Discipline Committee of the College of Physic-  
7 ians and Surgeons of Ontario ("Ontario Discipline Committee") found that Respondent  
8 had committed the following acts of professional misconduct pursuant to the Ontario  
9 Health Professions Procedural Code:

- 10 (a) He engaged in sexual impropriety with a patient;  
11 (b) He sexually abused a patient; and  
12 (c) He engaged in acts or conduct relevant to the practice of medicine that,  
13 having regard to all the circumstances, would reasonably be regarded by members  
14 as disgraceful, dishonourable or unprofessional.

13 (A true and correct copy of the Ontario Disciplinary Committee's Decision is attached  
14 hereto as Exhibit A and incorporated by reference.)

15 4. The Ontario Discipline Committee's findings were based upon the follow-  
16 ing conduct. Respondent maintained a physician-patient relationship with Patient L.C.  
17 from February 1988 until the Spring of 1998. In the Spring of 1992, Respondent  
18 developed a social and later a sexual relationship with L.C. In July of 1992, L.C. began  
19 working in Respondent's medical office. Sometime in 1993, Respondent and L.C. began  
20 living together. In September 1993, Respondent and L.C. became engaged. In the Sum-  
21 mer of 1998, their relationship began to deteriorate following the death of L.C.'s mother.  
22 In December of 1998, Respondent moved out of the house he shared with L.C. From  
23 December of 1996 until February of 1997, Respondent provided counselling to L.C.  
24 during and after the break-up of their relationship, including attempts at reconciliation  
25 while on vacation together in Puerto Vallarta, Mexico. In February and March of 1997,  
26

1 Respondent signed a physician statement of disability for Patient L.C., describing her as  
2 suffering from clinical depression and being "totally disabled from gainful employment."

3 5. From February 1988 until the Spring of 1998, Respondent served as L.C.'s  
4 family care physician. Respondent's medical records reflect that he treated L.C. about 11  
5 times in 1992, about 22 times in 1993, and about 14 times in 1994. He treated her for a  
6 number of conditions, including vaginal infections, migraines, rectal pressure, decreased  
7 libido, pain during intercourse, menopause-related ailments, and post-operative psycho-  
8 therapy for depression and fear (after a hysterectomy). On one occasion in 1995,  
9 Respondent made a "house call" to treat L.C.'s migraine and prescribed the narcotic  
10 Demerol for her. After her mother's death, Respondent treated L.C. for migraines both at  
11 the office and at home with trigger-point injections—i.e., subcutaneous injections of a  
12 local anesthetic.

13 6. On several occasions, Respondent's billing records reflect that the services  
14 he provided to L.C. were billed to her health insurance carrier as "special visits to home."

15 7. There is no evidence that the care and treatment Respondent provided to  
16 L.C. was below the standard of care for a primary care physician. Respondent appropri-  
17 ately referred L.C. for evaluation and treatment by other medical specialists.

18 8. Respondent argued that he and L.C. lived together as common law spouses  
19 from September of 1993 through February of 1997 and therefore it was appropriate for  
20 him to continue to serve as her primary care physician.

21 9. The Code of Ethics of the Canadian Medical Association, which the  
22 College of Physicians and Surgeons of Ontario has formally adopted as a standard for  
23 physician conduct, states that an ethical physician "will only provide minor or emergency  
24 services to himself or his immediate family and these without payment."

1           10. On September 14, 2005, the Ontario Divisional Court affirmed the Ontario  
2 Discipline Committee's decision. (A true and correct copy of the Ontario Divisional  
3 Court's decision is attached hereto as Exhibit B and incorporated by reference.)

4           11. Respondent admits that the above-described conduct constitutes unprofes-  
5 sional conduct in violation of A.R.S. § 32-1401(27)(o), (z) and (q).

#### 6                                   CONCLUSIONS OF LAW

7           1. The Board possesses jurisdiction over the subject matter hereof and over  
8 Respondent.

9           2. The conduct and circumstances described above constitute unprofessional  
10 conduct pursuant to A.R.S. § 32-1401(27)(o) ("Action that is taken against a doctor of  
11 medicine by another licensing or regulatory jurisdiction due to that doctor's mental or  
12 physical inability to engage safely in the practice of medicine, the doctor's medical  
13 incompetence or for unprofessional conduct as defined by that jurisdiction and that  
14 corresponds directly or indirectly to an act of unprofessional conduct prescribed by this  
15 paragraph. The action taken may include refusing, denying, revoking or suspending a  
16 license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise  
17 limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on  
18 probation by that jurisdiction.").

19           3. The first act of professional misconduct found by the Ontario Discipline  
20 Committee—engaging in sexual impropriety with a patient—corresponds directly or  
21 indirectly to acts of unprofessional conduct prescribed by A.R.S. § 32-1401(27):

22                   (a) Respondent's engaging in sexual conduct with Patient L.C. from the  
23 Spring of 1992 until September 1993 corresponds directly to an act of unprofes-  
24 sional conduct prescribed by A.R.S. § 32-1401(27)(z) ("Engaging in sexual con-  
25 duct with a current patient or with a former patient within six months after the last  
26

1 medical consultation unless the patient was the licensee's spouse at the time of the  
2 contact or, immediately preceding the physician-patient relationship, was in a  
3 dating or engagement relationship with the licensee. For the purposes of this sub-  
4 division, 'sexual conduct' includes: (i) Engaging in or soliciting sexual relation-  
5 ships, whether consensual or nonconsensual; (ii) Making sexual advances, request-  
6 ing sexual favors or engaging in any other verbal conduct or physical contact of a  
7 sexual nature; (iii) Intentionally viewing a completely or partially disrobed patient  
8 in the course of treatment if the viewing is not related to patient diagnosis or treat-  
9 ment under current practice standards.”).

10 (b) Respondent's continuing to serve as Patient L.C.'s primary care  
11 physician after they became engaged in September 1993 until at least the Spring of  
12 1997 corresponds indirectly to an act of unprofessional conduct prescribed by  
13 A.R.S. § 32-1401(27)(q) (“Any conduct or practice that is or might be harmful or  
14 dangerous to the health of the patient or the public.”).

15 4. The second act of professional misconduct found by the Ontario Discipline  
16 Committee—sexually abusing a patient—similarly corresponds directly or indirectly to  
17 the acts of unprofessional conduct prescribed by A.R.S. § 32-1401(27) and described in  
18 paragraphs 3(a) above. The Ontario Health Professions Procedural Code defines “sexual  
19 abuse” of a patient to include: “(a) sexual intercourse or other forms of physical sexual  
20 relations between the [physician] and the patient; (b) touching, of a sexual nature, of the  
21 patient by the [physician]; and (c) behaviour or remarks of a sexual nature by the  
22 [physician] towards the patient.” O.S. 1991, ch. 18, sch. 2, §1(3).

23 5. The third act of professional misconduct found by the Ontario Discipline  
24 Committee—engaging in acts or conduct relevant to the practice of medicine that, having  
25 regard to all the circumstances, would reasonably be regarded by members as disgraceful,  
26

1 dishonourable or unprofessional—does not correspond directly or indirectly to an act of  
2 unprofessional conduct prescribed by A.R.S. § 32-1401(27).

3 **ORDER**

4 Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant  
5 to the authority granted to the Board by A.R.S. §§ 32-1451(T),

6 **IT IS HEREBY ORDERED:**

7 1. Respondent is issued a Decree of Censure for having had an action taken  
8 against him by another licensing or regulatory jurisdiction for unprofessional conduct—  
9 i.e., engaging in sexual conduct with a current patient and engaging in conduct that was  
10 or might have been harmful or dangerous to the health of a patient.

11 2. Respondent is placed on probation for one year with the following terms  
12 and conditions:

13 a. Respondent shall obtain 20 hours of Category 1 Continuing Medical  
14 Education (“CME”) in Physician-Patient Ethics, a minimum 3-day course in  
15 Sexual Boundaries, and a minimum 3-day course in Professional Boundaries. All  
16 courses must be pre-approved by Board staff prior to registration and must be  
17 provided by an approved training or educational institution in the United States.  
18 The CME hours may be applied to the hours required for biennial renewal of  
19 medical licensure. The probation will terminate when Respondent supplies proof  
20 of course completion satisfactory to Board staff.

21 b. Respondent shall obey all federal, state and local laws and all rules  
22 governing the practice of medicine in Arizona.

23 3. This Order supercedes any previous orders or consent agreements and is the  
24 final disposition of case number MD-03-0266.

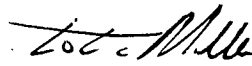
1 DATED this 6<sup>th</sup> day of April, 2006.

2 ARIZONA MEDICAL BOARD

3 [SEAL]



5 By:



TIMOTHY C. MILLER, J.D.  
Executive Director

6  
7 AMANDA J. DIEHL, M.P.A., C.P.M.  
Deputy Executive Director

8 ORIGINAL OF THE FOREGOING FILED  
9 this 7<sup>th</sup> day of April, 2006, with:

10 Arizona Medical Board  
9545 E. Doubletree Ranch Road  
Scottsdale, Arizona 85258

11 EXECUTED COPY OF THE FOREGOING MAILED  
12 this 7<sup>th</sup> day of April, 2006, to:

13 Robert A. Rosenberg, M.D.  
(Address of Record on file with the Board)  
14 Respondent

15 Stephen A. Wolf, Esq.  
Assistant Attorney General  
16 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
17 Attorneys for the Arizona Medical Board

18  
19 

20 LES04-1228/#458404

# Exhibit A

**THE DISCIPLINE COMMITTEE OF THE COLLEGE  
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed  
by the Complaints Committee of  
the College of Physicians and Surgeons of Ontario  
pursuant to Section 36(1) and Section 26(2)  
of the *Health Professional Procedural Code*,  
being Schedule 2 of the *Regulated Health Professions Act*,  
1991, S.O. 1991, c. 18, as amended.

**BETWEEN:**

**THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

**- and -**

**DR. ROBERT ARLEN ROSENBERG**

**PANEL MEMBERS:**

DR. R. MACKENZIE (CHAIR)  
DR. N. DE  
MS. J. FREDERICK  
MS. P. BEECHAM  
DR. J. THOMPSON

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF  
ONTARIO:**

MR. N. PERRIER

**COUNSEL FOR DR. ROSENBERG:**

MR. J. LISUS  
MR. BRAUTI

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

MR. R. WALKER

**PUBLICATION BAN**

## DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario ("CPSO") heard this matter at Toronto on February 11-12, 2002 and February 3 to 5, 2003.

### PUBLICATION BAN

Pursuant to subsection 47(1) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18, as amended, the Committee ordered that no person shall publish the identity of the patient or any information that could disclose the identity of the patient.

### ALLEGATIONS

The Notice of Hearing alleged that Dr. Rosenberg committed acts of professional misconduct:

1. under paragraph 29.30 of Ontario Regulation 548 ("O. Reg. 548"), R.R.O. 1990, the *Health Disciplines Act*, R.S.O. 1990, in that he engaged in sexual impropriety with a patient;
2. under clause 51(1)(b.1) of the Code, in that he sexually abused a patient;
3. under clause 1(1)33 of O. Reg. 856/93 made under the *Medicine Act*, 1991, S.O. 1990, in that he engaged in acts relevant to the practice of medicine that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
4. under paragraph 27.33 of O. Reg. 548, in that he engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

While the particulars in Appendix 1 to the Notice of Hearing dealt with other matters, at the outset of the hearing, counsel for the College informed the Committee that the

College would only be proceeding with the allegations as they relate to the incidents of sexual abuse and sexual impropriety.

## **RESPONSE TO ALLEGATIONS**

Dr. Rosenberg denied all allegations set out in the Notice of Hearing.

## **EVIDENCE FOR THE COLLEGE**

### **MS. LOLA CLAYMAN**

LC testified that she became a patient of Dr. Rosenberg on or about February 1988. She continued as his patient until the spring of 1998. Throughout this entire period, she maintained that he was her primary care physician. She attended him for medical care on a regular and frequent basis. Dr. Rosenberg's medical records were entered as an exhibit and supported LC's testimony in this regard.

In approximately December 1991, LC testified that the relationship began to evolve from a purely doctor-patient interaction into a social one. Dr. Rosenberg invited her to his apartment for coffee and kissed her when she left. Shortly thereafter, they began to see each other socially on a regular basis and the relationship became sexual. LC then separated from her husband and ultimately moved into an apartment in the same building as Dr. Rosenberg. At this point, Dr. Rosenberg moved in with her. At some point during this time frame, she began working for Dr. Rosenberg as an office assistant.

In 1995, LC purchased a house. She provided the down payment and Dr. Rosenberg serviced the mortgage payments. Dr. Rosenberg moved in with her, and the two of them lived together in the house for approximately two years. LC had three daughters who were young adults at the time, all of whom lived in the house at varying periods of time. The panel heard evidence from the Manager of Registration of the CPSO that Dr. Rosenberg had notified the College in writing that this was his mailing address from June 3, 1996 until July 30, 1997.

LC testified that Dr. Rosenberg provided her with medical care throughout the period of time that they were living together. These clinical encounters occurred in different

places, including the office and their home. OHIP records were entered as an exhibit and the panel was taken to several entries in which Dr. Rosenberg billed for services provided to LC as "special visits to home".

In the summer of 1996, LC's mother died. Dr. Rosenberg accompanied LC to the funeral in Montreal where he became quite angry with her and threatened not to drive her and the children back to Toronto. LC identifies this incident as the beginning of the deterioration in their personal relationship. She recalls becoming very despondent following her mother's death and continued to see Dr. Rosenberg as a physician for help in dealing with her emotional problems. By September 1996, LC was functioning so poorly that she applied for disability benefits and stopped working for Dr. Rosenberg. Dr. Rosenberg completed the medical report for her disability application, and the panel took note that he cited her diagnoses as "clinical depression, migraine headache".

LC and Dr. Rosenberg stopped living together sometime in 1996, but they continued to see each other socially and she continued to attend at his office for medical treatment. In June 1998, she decided to formally terminate the doctor-patient relationship.

On cross examination, LC testified that she was very much in love with Dr. Rosenberg and continues to have loving feelings toward him. She agreed that she and Dr. Rosenberg had become formally engaged at some point, but she could not recall the exact date. She believes it was probably sometime in 1993. She presented herself thereafter as his fiancée, but acknowledges that they lived together for all intents and purposes as husband and wife. Dr. Rosenberg was unable to marry her because of unresolved issues in his first marriage. A number of photographs were entered as exhibits, which showed LC and Dr. Rosenberg travelling and attending family functions together. LC agreed that neither she nor Dr. Rosenberg ever tried to keep their relationship secret. After their separation, she attempted on numerous occasions to reconcile the relationship until June 1998. After that point, she realized reconciliation was impossible, but she continued to see Dr. Rosenberg from time to time on a casual basis. Even subsequent to the complaint to the College, they have continued to communicate on a friendly basis.

## EVIDENCE FOR THE DEFENCE

Counsel for Dr. Rosenberg introduced a brief of letters in support of Dr. Rosenberg as an exhibit to the hearing. In addition, the panel heard evidence from five patients of Dr. Rosenberg. All of the witnesses described Dr. Rosenberg as a sensitive, effective and caring family physician. All felt that he was thoroughly ethical at all times in his dealings with patients. The additional letters contained in the brief were similarly supportive of Dr. Rosenberg.

On cross-examination, counsel for the College determined that at least three of the witnesses were unaware of the nature of the proceedings against Dr. Rosenberg. The brief of letters was entered on consent and therefore the authors were not tested on cross-examination. However, counsel for the College drew the panel's attention to the fact that virtually none of the letters indicated that the authors were aware of the allegations that were set out in the Notice of Hearing.

## FINDINGS OF THE COMMITTEE

The Committee finds that Dr. Rosenberg has committed professional misconduct with respect to all four allegations in the notice of hearing.

## REASONS FOR DECISION

Although Dr. Rosenberg denied all allegations at the outset of the hearing, his counsel invited the Committee to make a finding against him in respect of allegations 3 and 4 in that he had engaged in conduct that was disgraceful, dishonourable and unprofessional.

The Committee understands that acts of professional misconduct involving sexual relationships with patients that occurred prior to January 1, 1994 are covered by the provisions of the *Health Disciplines Act* and that such acts subsequent to January 1, 1994 are governed by the *Regulated Health Profession Act, 1991*. However, the Committee accepts unreservedly the College's position that contemporaneous sexual relationships with patients have always been unacceptable and particularly so when the doctor-patient relationship precedes the sexual one.

In this case, the Committee accepts the evidence that LC was Dr. Rosenberg's patient since 1988 and commenced a sexual relationship with him in 1991. LC's evidence in this regard was not challenged. Both the doctor-patient and the sexual relationship continued until 1998. It is abundantly clear that Dr. Rosenberg's misconduct spans both legislated periods.

Defence counsel argued that Dr. Rosenberg never engaged in a sexual relationship with LC under the guise of medical treatment. The Committee accepts the College's position that sexual misconduct is not to be considered as qualitatively different based on the location of the acts. The law is very clear in this respect. It prohibits sexual relationships with a patient wherever they take place and not just within the context of a medical encounter. The Committee also considered that Dr. Rosenberg billed for multiple medical "visits" that took place in the same home that he shared with LC.

Defense counsel argued strongly that the relationship between LC and Dr. Rosenberg had become a spousal one by September 1993 and that this now pre-existing spousal relationship was then caught by the passage of the legislation in January 1994. He further suggested it was open to the Committee to interpret that the legislation was not intended to capture this type of relationship. The Committee unequivocally rejects this line of argument. The legislation leaves no opportunity for discipline panels to "interpret" the intent of the legislators. Sex with a patient is sexual abuse, regardless of whether the sexual relationship has a positive or negative outcome. Dr. Rosenberg knew, or ought to have known that sex with his patient prior to 1994 was unacceptable. By January 1, 1994 he knew, or ought to have known that such misconduct was now sexual abuse and that the public and the profession had adopted a zero tolerance to such behaviour. Notwithstanding this knowledge, he made no effort to disengage himself from LC either personally or professionally.

The Committee also accepted the advice given by its independent legal counsel that laws do change from time to time requiring that changes in behaviour are necessary to ensure compliance with the law. This is particularly applicable to this case. Regardless of the inappropriateness of the sexual relationship in the first place, there is simply no justification for Dr. Rosenberg not to have transferred LC's care to another physician once he was so clearly in breach of the accepted behaviour of his profession. In the Committee's opinion, his failure to do so is perhaps the most egregious aspect of his misconduct.

The Committee accepted the College's position that character evidence should be given little or no weight in the liability phase of a discipline hearing. Further comment on this evidence will be provided in the reasons for the penalty decision.

Dated this 21<sup>st</sup> day of March, 2003.

*R. Mackenzie*

DR. RICHARD MACKENZIE (CHAIR)

ORIGINAL SIGNED BY

DR. NIBHAS DE

ORIGINAL SIGNED BY

DR. JOHN M. THOMPSON

ORIGINAL SIGNED BY

MS. PATRICIA BEECHAM

ORIGINAL SIGNED BY

MS. JANE FREDERICK



THE  
COLLEGE  
OF  
PHYSICIANS  
AND  
SURGEONS  
OF  
ONTARIO

FAX: (416) 961-3330  
TOLL FREE: (800) 268-7096  
TEL: (416) 967-2600

**NOTICE OF REVOCATION OF THE  
CERTIFICATE OF REGISTRATION FOR  
INDEPENDENT PRACTICE**

**OF**

**ROBERT ARLEN ROSENBERG, M.B., B.Ch., B.A.O.  
80 FINCH AVENUE WEST SUITE 202  
NORTH YORK, ONTARIO M2N 2H4  
(that being the last known address on the Register)**

**CERTIFICATE NO. 53104**


**DATE OF BIRTH: NOVEMBER 16, 1943**

**NATIONAL UNIVERSITY OF IRELAND, 1983**

On February 5, 2003, the Discipline Committee of the College of Physicians and Surgeons of Ontario, found Dr. Robert Arlen Rosenberg to have committed acts of professional misconduct pursuant to the *Health Professions Procedural Code*.

On March 21, 2003, the Discipline Committee of the College of Physicians and Surgeons ordered, inter alia, that the certificate of registration be revoked immediately.



Therefore, the certificate of registration, issued in the name of Dr. Robert Arlene Rosenberg is revoked effective Friday, March 21, 2003 at 6:00 p.m.

  
Rocco Gerace, M.D.  
Registrar

Dated 24 March 2003

CERTIFIED TO BE A TRUE AND  
CORRECT COPY OF THE ORIGINAL  
COPIE AUTHENTIQUE CERTIFIÉE  
ET CONFORME À L'ORIGINAL

Protecting the public ... guiding the profession

  
  
THE COLLEGE OF PHYSICIANS & SURGEONS OF ONTARIO

# **Exhibit B**

09/15/2005 11:07 FAX 416 382 7910

003

COURT FILE NO.: 213/03  
DATE: 20050914ONTARIO  
SUPERIOR COURT OF JUSTICE

## DIVISIONAL COURT

O'DRISCOLL, JARVIS AND WHALEN JJ.

BETWEEN:

DR. ROBERT ARLEN ROSENBERG

Appellant

Tracey Tremayne-Lloyd and Lad Kucts, for  
the Appellant

- and -

THE COLLEGE OF PHYSICIANS AND  
SURGEONS OF ONTARIO

Respondent

Lisa Brownstone and Carolyn Silver, for  
the Respondent

HEARD AT TORONTO: June 16, 2005

O'DRISCOLL J.:I. Nature of Proceedings

[1] The Respondent, The College of Physicians and Surgeons of Ontario (CPSO), served a Notice of Hearing, dated February 7, 2001, on Dr. Rosenberg, the Appellant, alleging that he committed the following acts of professional misconduct:

1. Under paragraph 29.30 of Ontario Regulation 548 ("O. Reg. 548"), R.R.O. 1990, the *Health Disciplines Act*, R.S.O. 1990, in that he engaged in sexual impropriety with a patient;

09/15/2005 11:07 FAX 416 362 7910

0004

Page: 2

2. Under clause 51(1)(b.1) of the Health Professions Procedural Code (Code), in that he sexually abused a patient;
3. Under clause 1(1)33 of O. Reg. 856/93 made under the *Medicine Act*, 1991, S.O. 1990, in that he engaged in acts relevant to the practice of medicine that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
4. Under paragraph 27.33 of O. Reg. 548, in that he engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

[2] The Discipline Committee of the CPSO heard the allegations at Toronto on February 11 and 12, 2002 and February 3, 4, and 5, 2003.

[3] In its decision, given orally on February 5, 2003 and in writing on March 21, 2003, the Discipline Committee found that Dr. Rosenberg had committed professional misconduct with respect to all four (4) allegations set out in the Notice of Hearing.

[4] The Discipline Committee concluded that the appropriate penalty in this case was revocation of Dr. Rosenberg's certificate of registration and a reprimand as required by ss. 51(5) of the Code. The following order was made:

- 1) The Discipline Committee directs the Registrar to revoke Dr. Rosenberg's certificate of registration effective immediately;
- 2) The Discipline Committee requires Dr. Rosenberg to appear before the panel to be reprimanded, and the fact of the reprimand to be recorded on the register;
- 3) The Discipline Committee orders Dr. Rosenberg to reimburse the College for funding up to the amount of \$10,000.00 provided for the complainant under the programme required under s. 85.7 of the *Health Professions Procedural Code*, and directs Dr. Rosenberg to post security acceptable to the College to guarantee

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the payment of any amounts Dr. Rosenberg may be required to reimburse under this order.

4) The Discipline Committee orders Dr. Rosenberg to pay to the College within 30 days of the date of this order the partial costs of this hearing fixed in the amount of \$10,000.00.

**PENALTY ORDER IN ABSENCE OF MANDATORY PENALTY**

Further, the Discipline Committee is of the opinion that, in the circumstances of this case, the only appropriate penalty would be revocation of Dr. Rosenberg's certificate of registration, even if revocation were not mandatory under the Code. Therefore, the Committee concludes that it would make the same penalty order as specified in paragraphs 1 to 4 above in the event there was no mandatory penalty under the Code.

[5] This appeal was brought under s. 70(1) of the Code, being Schedule 2 of the *Regulated Health Professions Act*, 1991, S.O. 1991, C. 18:

s. 70(1) A party to proceedings before .... a panel of the Discipline... Committee, other than a hearing of an application under subsection 72(1), may appeal from the decision of the ... panel to the Divisional Court.

(2) An appeal under ss. (1) may be made on questions of law or fact or both.

(3) In an appeal under ss. (1), the Court has all the powers of the panel that dealt with the matter.....

[6] The appellant requests that the Discipline Committee's decisions with regard to findings of professional misconduct and penalty be set aside and the judgment be granted as follows: that the charges of sexual abuse be dismissed; that the sexual abuse and mandatory revocation provisions, as they relate to the appellant's conduct, be declared invalid; that the professional misconduct charges be adjudicated pursuant to and any penalty imposed be pursuant to the

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provisions of the *Health Disciplines Act*. In the alternative, the appellant asks that this matter be remitted for a rehearing.

[7] At the outset of the hearing, the Appellant denied all allegations. However, his counsel invited the Discipline Committee to make a finding against him in respect of allegations 3 and 4 in the Notice of Hearing, namely that he had engaged in conduct that was disgraceful, dishonourable and unprofessional.

## II. Chronology

[8] Counsel for the CPSO provided the members of the Court with the following "timeline":

### DATE

### EVENT

February 1, 1988

LC becomes Dr. Rosenberg's patient

Approximately Spring 1992

Relationship becomes social; shortly thereafter, sexual

Approximately 1993

Dr. Rosenberg and patient begin living together

September, 1993

Dr. Rosenberg and patient become engaged.

January 1, 1994

RHPA sexual abuse provisions came into effect

October 30, 1995

Patient buys house that Dr. Rosenberg and patient move into together

Summer, 1996

Patient's mother dies; relationship between Dr. Rosenberg and patient begins to deteriorate

December, 1996

Shortly after Dr. Rosenberg moves out, patient sells house

November 12, 1996; December 12, 1996

Dr. Rosenberg provides psychotherapy to

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January 9, 1997; February 10, 1997	patient during and following break-up of relationship and during attempts at reconciliation (some appear to be while in Puerto Vallarta together)
February 14, 1997; March 17, 1997	Dr. Rosenberg signs physician statement of disability, describes patient as suffering from clinical depression and as "totally disabled from gainful employment"
Spring, 1997	Talk of reconciliation; Dr. Rosenberg continues to treat patient
Spring, 1998	End of doctor-patient relationship; patient goes to another physician

#### Reasons of the Discipline Committee

Although Dr. Rosenberg denied all allegations at the outset of the hearing, his counsel invited the Committee to make a finding against him in respect of allegations 3 and 4 in that he had engaged in conduct that was disgraceful, dishonourable and unprofessional.

The Committee understands that acts of professional misconduct involving sexual relationships with patients that occurred prior to January 1, 1994 are covered by the provisions of the *Health Disciplines Act* and that such acts subsequent to January 1, 1994 are governed by the *Regulated Health Profession Act, 1991*. However, the Committee accepts unreservedly the College's position that contemporaneous sexual relationships with patients have always been unacceptable and particularly so when the doctor-patient relationship precedes the sexual one.

In this case, the Committee accepts the evidence that LC was Dr. Rosenberg's patient since 1988 and commenced a sexual relationship with him in 1991. LC's evidence in this regard was not challenged. Both the doctor-patient and the sexual relationship continued until 1998. It is abundantly clear that Dr. Rosenberg's misconduct spans both legislated periods.

Defence counsel argued that Dr. Rosenberg never engaged in a sexual relationship with LC under the guise of medical treatment. The Committee accepts the College's position that sexual misconduct is not to be considered as qualitatively

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different based on the location of the acts. The law is very clear in this respect. It prohibits sexual relationships with a patient wherever they take place and not just within the context of a medical encounter. The Committee also considered that Dr. Rosenberg billed for multiple medical "visits" that took place in the same home that he shared with LC.

Defence counsel argued strongly that the relationship between LC and Dr. Rosenberg had become a spousal one by September 1993 and that this now pre-existing spousal relationship was then caught by the passage of the legislation in January 1994. He further suggested it was open to the Committee to interpret that the legislation was not intended to capture this type of relationship. The Committee unequivocally rejects this line of argument. The legislation leaves no opportunity for discipline panels to "interpret" the intent of the legislators. Sex with a patient is sexual abuse, regardless of whether the sexual relationship has a positive or negative outcome. Dr. Rosenberg knew, or ought to have known that sex with his patient prior to 1994 was unacceptable. By January 1, 1994 he knew, or ought to have known that such misconduct was now sexual abuse and that the public and the profession had adopted a zero tolerance to such behaviour. Notwithstanding this knowledge, he made no effort to disengage himself from LC either personally or professionally.

...Regardless of the inappropriateness of the sexual relationship in the first place, there is simply no justification for Dr. Rosenberg not to have transferred LC's care to another physician once he was so clearly in breach of the accepted behaviour of his profession. In the Committee's opinion, his failure to do so is perhaps the most egregious aspect of his misconduct.

### III. Standard of Review

[9] The statutory right of appeal given in s. 70, *supra*, includes questions of law or fact or both. The RHPA does not contain a privative clause to screen the Discipline Committee from court scrutiny.

[10] The Supreme Court of Canada has determined that disciplinary bodies of self-governing professions should be awarded a large degree of autonomy and their decisions should not be interfered with "unless judicial intervention is clearly warranted": *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, 888.

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[11] The Supreme Court of Canada said in *Peston v. British Columbia (Superintendent of Brokers)*, [1974] 2 S.C.R. 557, 591:

Consequently, even where there is no privative clause and where there is a statutory right to appeal, the concept of the specialization of duties requires that deference be shown to decisions of specialized tribunals on matters which fall squarely within the tribunal's expertise.

[12] In *Re Takahashi and College of Physicians and Surgeons of Ontario* (1979), 26 O.R. (2d) 353, 363 (Div. Ct.) Robins J. said:

The discipline committee of a professional body is charged with a public responsibility to ensure and maintain high standards of professional ethics and practice. The penalty imposed by it against a member for professional misconduct, as has often been said, is not to be lightly interfered with. The committee in the proper discharge of its function is best able to assess the gravity of the misconduct and its consequences to the public and the profession. Unless there is error in principle, unless the punishment clearly does not fit the crime, so to speak, a Court sitting in appeal ought not to disturb the penalty and substitute its judgment for that of the committee. [my emphasis]

[13] The Supreme Court of Canada in *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] S.C.J. No. 18 at paras. 16, 20-21 and 36 and in the *Law Society of New Brunswick v. Ryan*, [2003] S.C.J. No. 17 at para. 27 and the Divisional Court in *Devgan v. College of Physicians and Surgeons of Ontario*, [2005] O.J. No. 306 have held that the standard of review is one of reasonableness.

IV. The College of Physicians and Surgeons Notices to Members, Issue No. 3, January 1982

[14] It stated, in part:

PHYSICIANS TREATING THEIR OWN FAMILY

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Members are reminded that the Code of Ethics of the Canadian Medical Association, which this College has formally adopted as a standard for physician conduct, states that an ethical physician:

"will provide only minor or emergency services to himself or his immediate family and these without payment."

V. Grounds of Appeal

[15] Counsel for the Appellant submits that there should be a "spousal exemption" read into the legislation in order to avert the draconian results which would otherwise take over.

[16] The Discipline Committee had ample evidence of the following matters before it:

(a) that there was a doctor/patient relationship between Dr. Rosenberg and LC from February 1, 1988 to the spring of 1998, and

(b) there was a sexual relationship between the same two people from the spring of 1992 until the spring of 1998.

[17] The evidence before the Discipline Committee showed that the relationships were concurrent during that period of time. The concurrency of the relationships are necessary ingredients to meet the definition of "sexual abuse" under the legislation which carries a mandatory penalty of revocation of licence.

[18] Counsel for the Appellant referred us to the decision of the Court of Appeal for Ontario in *Mussant v. College of Physicians and Surgeons of Ontario*, [2004] O.J. No. 5176 and submitted that it provided or allowed, through reasonable interpretation, for a "spousal

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exemption to the strictures of the sexual abuse" provision. We are of the view that, if concurrence is proved, there is no such exemption.

[19] Counsel for the Appellant also submitted that the Discipline Committee had applied the 1994 legislation in such a manner as to create a retroactive application of the statute. In our view, the Committee applied the 1994 legislation on and after January 1, 1994 to the conduct that it found on the evidence and that there is no retroactive application of the section.

#### VI. Result

[20] In my view, the Discipline Committee's decision is supported by evidence and reasons which stand up to probing examination. In summary, the decision under review is reasonable and the appeal is dismissed.

#### VII. Costs

[21] If counsel are unable to agree as to costs, counsel for the CPSO will serve and file a draft bill of costs within twenty (20) days of the release of these reasons. Thereafter, the Appellant will have five (5) days to respond. Thereafter, costs will be fixed.

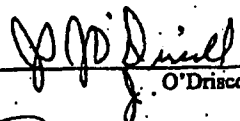
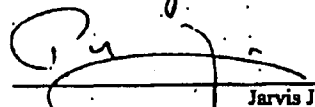
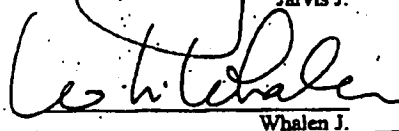
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VIII. Publication Ban

[22] There will be a continuation of the publication ban imposed by the Discipline Committee of the CPSO prohibiting the publication or broadcast of the name of the complainant/patient, or information by which she might be identified.

  
O'Driscoll J.  
Jarvis J.  
Whalen J.

Released:

SEP 14 2005

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COURT FILE NO.: 213/03  
DATE: 20050914

ONTARIO  
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

O'DRISCOLL, JARVIS AND WHALEN JJ.

BETWEEN:

DR. ROBERT ARLEN ROSENBERG

Appellant

- and -

THE COLLEGE OF PHYSICIANS AND  
SURGEONS OF ONTARIO

Respondent

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REASONS FOR JUDGMENT

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O'Driscoll J.

Released: September 14, 2005

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0014

DR. ROBERT ARLEN ROSENBERG and THE COLLEGE OF PHYSICIANS  
AND SURGEONS OF ONTARIO

Court File Number: 213/03

JUDICIAL COURT

Respondent

Justice O'Driscoll, Jarvis, And Whitham  
THURSDAY 16<sup>th</sup> JUNE 2005

DECISION - THIS APPEAL

~~DECISION~~ IS dismissed for the written reasons  
of even data given for the court by  
O'Driscoll J.

If counsel are unable to agree as  
to get the the provision and schedule  
set out - per [20] of the reason shall  
take effect.

The publication ban shall  
continue per para [22] of the  
reason.

September 14, 2005

*J. P. Driscoll*  
J.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT  
TORONTO

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